No. 86 1799

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

INTERNATIONAL SOUND TECHNICIANS, CINETECHNICIANS AND TELEVISION ENGINEERS OF THE MOTION PICTURE AND TELEVISION INDUSTRIES, LOCAL 695,

Petitioners,

vs.

MOTION PICTURE & VIDEOTAPE EDITORS GUILD, LOCAL 776, IATSE; INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA; INTERNATIONAL PHOTOGRAPHERS UNION, LOCAL 659,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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PARTIES

Respondent International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada ("IATSE" or "the International") concurs with Petitioner's list of parties, with the following correction. Al DiTolla is the current President of IATSE, and Walter F. Diehl has become its President Emeritus.

COUNTERSTATEMENT OF THE CASE

The facts relevant to the Court's decision on the Petition may be stated very briefly. The IATSE Constitution, relevant portions of which are attached as Appendix 1 hereto, gives plenary authority to the International, at various levels of internal hierarchy, to determine the jurisdiction of the local unions to which it issues charters. See Constitution, Article 2, Section 1; Article 7, Sections 6, 14; Article 18, Sections 1, 11; Article 19, Section 21; Article 20, Section 1. In 1973, the International, pursuant to its Constitutional authority, approved the division of local jurisdiction over certain videotape job classifications between two locals, Petitioner Local 695, and Respondent Local 659. Those two locals entered into an agreement at that time, which was approved by the International.

In 1974, IATSE's highest authority, the Convention, adopted a resolution to hold hearings concerning the allocation of videotape jurisdiction among the locals. As a result of those hearings, IATSE's General Executive Board made a determination in 1975 as to the jurisdictional allocation of all job classifications in videotape. The Board's decision was ratified by the 1976 Convention. By this action, Petitioner was granted jurisdiction over a substantial portion of the videotape classifications; however, jurisdiction over other classifications, including Technical Director, was distributed among other locals. Finally, in 1978, the Convention voted to return the question of jurisdiction to the International, thus leaving the question with the International President, subject to internal appeals. The President's position has remained consistent with that of the Board, and the 1976 Convention.

Here, as throughout the course of this litigation, Petitioner seeks to challenge the 1975 and 1976 actions of IATSE on the basis of the existence of the 1973 agreement between the two locals. Because Petitioner did not exhaust its internal union remedies before seeking judicial involvement, the District Court granted summary judgment in favor of respondents. On appeal, the Ninth Circuit affirmed the grant of summary judgment and concluded that federal labor law called for enforcement of the International's Constitutional powers rather than the terms of a subordinate agreement between locals. Petitioner now seeks review before this Court on the ground that effectuation of federal labor policy is an inadequate basis for decision. As discussed below, that contention must fail.

ARGUMENT

I. THE COURT OF APPEALS' DECISION IS NOT IN CONFLICT WITH THIS COURT'S DECISION IN JOURNEYMEN.

Rule 17 of the Rules of the United States Supreme Court provides: "A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor." Rule 17 goes on to indicate the type of questions reviewable by the Court pursuant to a Petition for Writ of Certiorari: conflicts between circuits, between Courts of Appeal and state courts of last resort, and conflicts between lower courts and the decisions, or prospective decisions, of this Court.

Petitioner, International Sound Technicians, Cinetechnicians and Television Engineers of the Motion Picture & Television Industries, Local 695, ("Local 695") apparently categorizes its argument as falling under section 1(c) of Rule 17, arguing that the Court of Appeals decided a federal question in a way that is in conflict with this Court's decision in *United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry v. Local 334, United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry, etc.*, 452 U.S. 615, 101 S.Ct. 2546, 69 L.Ed 2d 280 (1981).

Yet there is no conflict between the *Journeymen* decision and the Circuit Court's decision in this case. In *Journeymen*, this Court answered the question raised by a circuit conflict as to whether or not there is federal jurisdiction under Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. Section 185(a), over suits between local unions and parent international unions for alleged violations of union constitutions. The Court concluded that subject matter jurisdiction did exist, but did not find it necessary to discuss the composition of the substantive, federal law applicable in such suits.

Although Local 695 acknowledges that the Court did not decide the very issue which it deems "at the heart of this controversy," Petition, p.5, it nonetheless claims that the Circuit Court's decision using its Section 301 jurisdiction to enforce a union's constitution is in conflict with the *absence* of a decision on the issue of the applicable substantive law in *Journeymen*. In order to create a conflict, Petitioner cites a law review article which suggests that *Journeymen* "hints"

that state law may apply. This is certainly not convincing authority for the proposition that a conflict exists requiring action by this Court.

The fact of the matter is that the *Journeymen* case goes no further than to define union constitutions as "contracts . . . between . . . labor organizations" so as to bring suits for enforcement of union constitutions unquestionably within the scope of Section 301(a). The Ninth Circuit's opinion in this case specifically embraces the holding of *Journeymen*, and, by upholding action authorized by the union's constitution, is in complete harmony with that decision. See Petition, Appendix 2.

Petitioner's claim that the two decisions are at odds is therefore irrational. Accordingly, in this case, where there is no conflict to resolve, the Court may properly deny the Petition.

II. THIS CASE DOES NOT INVOLVE UNRESOLVED QUESTIONS OF LAW

Once Section 301 jurisdiction has been granted, the question of what substantive law applies of course arises. But, for purposes of this case, that question has already been answered. "It is enough to observe that *the substantive law to apply 'is federal law, which the courts must fashion from the policy of our national labor laws.'* " *Journeymen*, 452 U.S. at 627, quoting *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456, 77 S.Ct. 912, 917, 1 L.Ed.2d 172 (1957) (emphasis supplied). *See also Local 334 United Association of Journeymen*, 669 F.2d 129 (3rd Cir. 1982) (on remand) (application of federal standard to question of reasonableness of

International union's redistribution of local union jurisdiction).

In *Journeymen*, this Court observed that the "primary purpose of the [LMRA, or] Taft-Hartley Act was to 'promote the achievement of industrial peace through encouragement and refinement of the collective bargaining process.' " *Journeymen*, 353 U.S. at 623, 101 S.Ct. at 2551. The Court went on to reason:

> Surely Congress could conclude that the enforcement of the terms of union constitutions — documents that prescribe the legal relationship and the rights and obligations between the parent and affiliated locals — would contribute to the achievement of labor stability.

Id.

And, in fact, the Courts of Appeal have uniformly exercised their authority under Section 301 to promote labor peace by enforcing the contractual systems of governance agreed upon by labor organizations. *See, e.g., Local 37, Sheet Metal Workers' International Association v. Sheet Metal Workers' International Association*, 655 F.2d 892, 895 (8th Cir. 1981) enforcement of procedural requirements of union's constitution prerequisite to merger of local unions); *Local 472 of the United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada v. Georgia Power Co.*, 684 F.2d 721, 725 (11th Cir. 1982) (action for enforcement of property rights arising from union constitution); *Local Union No. 1075, United Rubber, Cork, Linoleum and Plastic Workers of America v. United Robber, Cork, Linoleum and Plastic Workers of America*, 716 F.2d 182,

184 (3d Cir. 1983) (enforcement of International union's constitutional power to allocate assets upon creation of new local); See also *Kinney v. International Brotherhood of Electrical Workers*, 669 F.2d 1222, 1229-30 (9th Cir. 1981) (plaintiff alleging discharge in violation of union constitution has standing under section 301(a)).

Although Petitioner characterizes this case as one presenting a question regarding the present enforceability of a "contract" between two local unions, the real dispute is over the International's constitutional authority to change jurisdictional assignments. The applicable standard in reviewing challenged conduct under a union's constitution is set forth in *Stelling v. I.B.E.W.*, 587 F.2d 1379, 1388 (9th Cir. 1978):

> *Courts are reluctant to substitute their judgment for that of union officials in the interpretation of the union's constitution, and will interfere only where the officials' interpretation is not fair or reasonable.*

(quoting *Vestal v. Hoffa*, 451 F.2d 706, 709 (6th Cir. 1971) cert. den., 406 U.S. 934, 92 S.Ct. 1768, 32 L.Ed.2d 135 (1972)).

The *Stelling* court went on to state:

> [A] breach [of section 501 of the LMRDA] occurs when union officials fail to comply with the union constitution. Nevertheless, *when the union officials have offered a reasonable construction of the constitution, and no bad faith on their part has been shown, the courts should not disturb the union officials' interpretation.*

587 F.2d at 1388 (emphasis supplied).

The same principle applies here. After reviewing the record *de novo*, the Court of Appeals concluded that "[*t*]*he plain language of the IATSE Constitution authorized the actions taken by the delegates at the convention, the Board, and the International President. Their actions were neither unfair nor unreasonable.*" Opinion, set forth in full in Petition, Appendix 1, p.7.

The Court's conclusion is borne out by the record. The IATSE Constitution is "the supreme law of [the] Alliance and its constituent members. Article 1, Section 1. The International President has the power to interpret the Constitution, "and his decisions thereon shall be binding upon all members and affiliated local unions. . . . The International President shall render decisions upon questions of law where the Constitution and Bylaws contain no express provisions for the determination thereof." Article 7, Section 6.

In addition, the Constitution gives to the President:

> those duties usually devolving upon the International President or executive officer of similar voluntary organizations and his authority shall be that ordinarily conferred upon similar officers having broad executive powers and in construing this section it is the desire of this Alliance to insist upon a construction which will support the actions of the International President in carrying out the expressed purposes of the Alliance . . . , and the International President shall have . . . the power to issue such rules, regulations, order, or mandates as he may deem necessary or advisable in the conduct of his said office.

Article 7, Section 14.

Final resolution of jurisdictional disputes between local unions also rests with the President:

> If any affiliated Local Union shall have a grievance against another affiliated Local Union, or if there shall be a disagreement between Local Unions respecting their respective jurisdiction, membership or policies, such grievances or disputes shall be referred by the Local Unions to the International President for his decision and his decision shall be binding upon the Local Unions involved.

Article 19, Section 21. See also Article 18, Section 1 (local unions exist pursuant to charters granted by the President or the Convention), and Article 18, Section 11, Article 20, Section 1 (such charters are revocable by the same authority).

The reasonableness of the International's actions having been determined, the Court need go no further.

Nonetheless, Local 695 seeks to challenge the authority of the International to do what the union's Constitution authorizes it to do. It insists that a jurisdictional agreement reached in 1973 in order to effectuate the judgment of the International at that time, should be analyzed as a perpetually binding statement of jurisdictional intent.

But the 1973 agreement itself does not claim such lofty aspirations. By its own terms, it is merely an agreement between two locals to recognize as between themselves, the jurisdiction over certain job functions conferred upon them by the International. See Petition, Appendix 5. It does not purport to bind any other local,

and does not claim any original authority to determine jurisdictional lines.

To the contrary, the agreement acknowledges the fact that the authority to determine jurisdictional boundaries rests solely with the International. The agreement was struck "in accordance with and to implement the action of the 51st convention of the Alliance" upholding "a determination of the General Executive Board . . . that jurisdiction over videotape operations be continued in the International. . . . Both Locals, in working out this Agreement, believe they have fully complied with the action of the 51st Convention."

Thus the agreement was in the nature of enactment legislation by a subordinate government body. The Locals' authority to enter into such an agreement was clearly derivative, and conditional. See IATSE Constitution, Article 2, Section 1, and Article 21, Section 5. Without approval of the International, the agreement had no enforceability. When, by exercise of its Constitutionally granted discretion, the governing authority removed its approval and drew new jurisdictional lines, that agreement lost its imprimatur, and was no longer effective.[1]

Thus, as the Court of Appeals concluded:

> Absent a specific limitation in a union constitution, this court will not interfere with the efforts of a union's leaders to manage the

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[1] Indeed, because such an agreement has not yet been defined as within the scope of Section 301(a), federal jurisdiction to decide the enforceability of the 1973 contract is open to question. See *Journeymen*, 452 U.S. at 627, 101 S.Ct. at 2553.

> affairs of their organization. A division of jurisdiction among local unions is one such area into which this court declines to interfere. Disputes between an international and its locals, or disputes between locals, are best left for internal settlement. A written agreement between local unions, even if subsequently ratified by the international, cannot establish a permanent, immutable allocation of jurisdiction among the locals or foreclose other locals from asserting a claim to such work. In view of the broad powers ordinarily given internationals under their constitutions and bylaws, we conclude that such agreements are subject to revision, review or cancellation by the international, so long as that body follows the procedures prescribed in its charter.

Opinion, p.7.

III. THE NINTH CIRCUIT'S DECISION IS CONSISTENT WITH FEDERAL LABOR LAW PRECEDENT.

Congress has established a statutory system by which unions have been given the freedom to govern themselves, subject to judicial intervention only when that system breaks down and denies union members certain basic rights. See generally, Labor Management Reporting and Disclosure Act of 1959 (LMRDA or Landrum-Griffin). 29 U.S.C. Section 401 et seq., and *Phillips v. Osborne*, 403 F.2d 826, 828-31 (9th Cir. 1968) (discussion of the legislative history of Section 501 of the LMRDA).

As the Circuit Court properly recognized, there is therefore

> a well-established federal policy of avoiding unnecessary interference in the internal affairs of unions. "It would seem self evident that the interpretation of a union's own constitution represents virtually the ultimate in internal affairs, and the impropriety of permitting critical examination, by . . . outsiders must be considered offensive." As such, absent bad faith or special circumstances, an interpretation of a union constitution by union officials, as well as interpretations of the union's rules and regulations, should not be disturbed by the court.

Opinion, pp.4-5, (citations omitted).

The essence of the Ninth Circuit's opinion, as well as the overriding principle of the applicable precedent, is that Congress did not intend for the judiciary to become unnecessarily involved in internal union matters. See, e.g., *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 87 S.Ct. 2001, 18 L.Ed.2d 1123 (1967) (construing Section 8(b)(1)(a)); *NLRB v. Boeing Co.*, 412 U.S. 67, 93 S.Ct. 1952, 36 L.Ed.2d 752 (1973) (same); *Stelling, supra*, 587 F.23d at 1388-89 (construing scope of section 501 of the LMRDA in respect to alleged breach of union constitution).

Petitioner belittles this legal principle by derogatorily labeling it a "maxim of construction or a quasi-presumption," mere "policy" which, Petitioner claims, should yield to state law principles governing state law contracts. But this "policy" against judicial involvement in internal union matters is in fact one of the

controlling principles of federal labor law. See, e.g., *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338, 73 S.Ct. 681, 686, 97 L.Ed.2d 1048, 1058 (1953) (deferral to union's exercise of judgment in carrying out its representation function); *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959) (deferral to NLRB); *United Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574, 582-83, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960) (deferral to private system of dispute resolution); *NLRB v. Allis-Chalmers, supra*, 388 U.S. 175 (deferral to union judgment regarding imposition of discipline upon members).

Accordingly, the Ninth Circuit acted wholly within the bounds of well-accepted principles of federal labor law. That being the case, its decision should rest undisturbed.

IV. THE DISTRICT COURT HAVING FOUND THAT PETITIONER UNDISPUTEDLY AND INEXCUSABLY FAILED TO EXHAUST INTERNAL UNION APPEAL PROCEDURES, THE QUESTION OF WHAT, IF ANY, FEDERAL LAW APPLIES TO THE 1973 AGREEMENT NEED NOT BE DECIDED.

Where, as here, there is a "disagreement between Local Unions respecting their respective jurisdiction . . . such grievances or disputes shall be referred by the Local Unions to the International President for his decision and his decision shall be binding upon the Local Unions involved." IATSE Constitution, Article 19, Section 21. In addition, a dissatisfied Local may

appeal to the General Executive Board, Article 11, Section 5, Article 17, Section 1, and from there to the "Alliance in Convention asembled, and the latter body shall be the tribunal of ultimate judgment." Id.

Local 695 did not follow the Constitutional appeals procedure, and thus failed to exhaust internal remedies. See Order Granting Summary Judgment on Counterclaim (dismissing Local 695's claim for enforcement of the 1973 agreement on the exhaustion issue alone). Federal law is therefore clear that the merits of the 1973 contract claim need not be reached. See Id, pp. 8-10, and cases cited therein.

CONCLUSION

Because the unwavering principle of federal labor law requires judicial abstinence in the area of internal union affairs, because the challenged conduct of the International was manifestly reasonable, and because the Court of Appeals acted in concert with the applicable law, Respondent IATSE respectfully requests that the Court decline to issue a Writ of Certiorari.

Dated: May 27, 1987

Respectfully submitted,

LEO GEFFNER
GEFFNER & SATZMAN
A Professional Corporation
Attorneys for Respondent
IATSE

APPENDIX A

APPENDIX A

57th EDITION

CONSTITUTION
AND
BY-LAWS

Adopted—August 1st, 1984

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYES
and
MOVING PICTURE MACHINE OPERATORS
of
THE UNITED STATES AND CANADA

Established 1893

. . .

ARTICLE TWO
Government.

Section 1. Supreme Law

This Constitution and By-Laws shall be the supreme law of this Alliance and of its constituent members.

. . .

ARTICLE SEVEN
The International President.

. . .

Section 6. Interpret Constitution and By-Laws

The laws of this Alliance as contained in this Constitution and By-Laws shall be interpreted by the International President and his decision thereon shall be binding upon all individual members and affiliated local unions of the Alliance until amended or reversed in the manner hereafter provided.

The International President shall render decisions upon questions of law where the Constitution and By-Laws contain no express provisions for the determination thereof. His ruling upon such questions shall be made in conformity with the spirit and substance of the Constitution and By-Laws and with regard to the equities of the circumstances.

Any decision of the International President, rendered pursuant to the provisions of this Section, shall be subject to appeal to the General Executive Board in the manner provided hereafter in Article Seventeen.

. . .

Section 14. Executive Powers

The President shall be the executive head of this Alliance and his duties shall be those duties usually devolving upon the International President or executive officer of similar voluntary organizations and his authority shall be that ordinarily conferred upon similar officers having broad executive powers and in construing this section it is the desire of this Alliance to insist upon a construction which will support the actions of the International President in carrying out the expressed purposes of the Alliance, not only along the lines expressly herein indicated but in a broad general manner, and the International President shall have and is hereby specifically given the power to issue such rules, regulations, orders or mandates as he may deem necessary or advisable in the conduct of his said office.

In addition to the general powers hereby conferred upon the International President he shall have all special powers conferred upon him by this Constitution, By-Laws and Laws enacted thereunder.

Any such decisions, rules, regulations, orders or mandates shall be appealable to the General Executive Board and from the decision of said Board to the delegates of this Alliance when assembled in Convention, as provided in this Constitution in case of appeals from decisions of the President.

. . .

ARTICLE SEVENTEEN
Appeals

. . .

Section 6. Decisions Conclusive

The members of this Alliance shall submit all their rights within the Alliance to the determinations of its proper tribunals, and agree that the decisions of these tribunals shall be conclusive as to all rights and privileges accruing from membership.

. . .

ARTICLE EIGHTEEN
Charters.

Section 1. Power to Grant Charters

The power to grant charters of affiliation to subordinate local unions shall be vested in the Convention and in the President of this Alliance when a Convention is not in session.

. . .

Section 11. Revocation of Charters

a. The Charter of an affiliated local union shall be automatically revoked whenever the membership of the local union falls below seven members, upon whom full per capita tax is paid or below 15 members upon whom full per capita tax is paid if the charter was granted after September 1, 1978.

b. At the discretion of the International President the charter of an affiliated local union may be

suspended or revoked whenever its total indebtedness to the International Alliance shall equal or exceed the per capita tax for two quarters. A local union so delinquent shall be subject to expulsion or suspension for this cause, without trial or appeal.

c. The charter of any affiliated local union may be revoked at the discretion of the International President if at any time the local union fails to hold regular meetings, as hereafter provided. No local union so expelled shall be entitled to trial or appeal.

d. The charter of any affiliated local union may be suspended or revoked for violations of the laws of this Alliance, as contained in this Constitution and By-Laws in the manner provided hereafter in Article Twenty.

. . .

ARTICLE NINETEEN
Powers and Duties of Local Unions.

. . .

Section 21. Disputes Between Local Unions

If any affiliated local union shall have a grievance against another affiliated local union, or if there shall be a disagreement between local unions respecting their respective jurisdictions, membership or policies, such grievances or disputes shall be referred by the local unions to the International President for his decision and his decision shall be binding upon the local unions involved.

• • •

ARTICLE TWENTY
Discipline of Local Unions.

Section 1. Grounds for Discipline

Any affiliated local union violating the provisions of the Constitution and By-Laws or engaging in conduct that is detrimental to the advancement of the purposes which this Alliance pursues, or as would reflect discreditability upon the Alliance, or that is involved in any corruption or financial malpractice, or interferes with the performance by the Alliance of any contracts it holds or of any duties it may have as bargaining agent or the fulfillment of its legitimate objects as a labor organization in any other respects, shall be subject to the penalties imposed for such violations upon conviction therefor whether specific penalties are provided in this Constitution and By-Laws, and where no specific penalties for violation of any section of this Constitution and By-Laws shall not be exclusive and in the event that the violation committed by the local union is of a gross and willful nature or is a repeated violation, the local union shall upon conviction be subject not only to the express penalty provided for each offense but also to such additional penalties including additional fines, trusteeship and/or revocation of charter as may be deemed approporiate by the trial body.

. . .

ARTICLE TWENTY-ONE
Privileges and Duties of Membership

. . .

Section 5. Obligations of Membership

Every applicant for membership in this Alliance, whose application has been favorably balloted upon by a local union, shall, before being inducted into membership, be required to read thoroughly the Constitution and By-Laws of this Alliance of the local union, obtaining such instructions therein as he shall request from the officers of the local union.

The laws of this Alliance and of the local union shall be binding upon the individual members thereof and each member shall be deemed to have consented to be governed thereby.

Upon induction into membership new members shall swear or affirm their intention to observe the provisions of this Constitution and By-Laws and the Constitution and By-Laws of the local union and to accept such laws as conclusive of their rights within this Alliance, in witness whereof they shall sign the pledge in the bound copies presented to them. The pledge so signed shall be detached and forwarded to the General Office by the Secretary of the local union.

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 10835 Santa Monica Boulevard, Los Angeles, California 90025; that on May 29, 1987, I served the within *Opposition to Petition for Writ of Certiorari* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.E.
Washington, D.C. 20543
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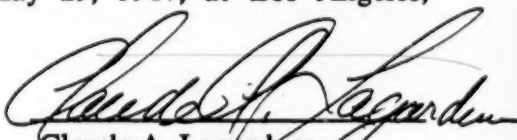
I declare under penalty of perjury that the foregoing is true and correct. Executed on May 29, 1987, at Los Angeles, California.



Claude A. Lagardere
(Original signed)